

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 92611 / August 9, 2021**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4241 / August 9, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20456**

**In the Matter of**

**GARY S. KLEIN**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Gary S. Klein (“Klein” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. From the fourth quarter of 2016 through his departure from the Company on August 31, 2017 (the "Relevant Period"), Gary S. Klein, the former Chief Financial Officer ("CFO") of Sequential Brands Group, Inc. ("Sequential" or the "Company"), caused Sequential to file materially inaccurate disclosures in its current and periodic reports and to maintain inaccurate books and records regarding goodwill. By the fourth quarter of 2016, Sequential's goodwill was more likely than not impaired, but impairment was not recognized until the fourth quarter of 2017, when Sequential belatedly impaired \$304.1 million of goodwill.

2. During the Relevant Period and in accordance with GAAP, Sequential was required to test its goodwill for impairment at least annually. Sequential was also required to conduct interim goodwill impairment tests to the extent an event occurred or circumstances arose that indicated that it was more likely than not that a goodwill impairment existed. Accounting guidance references a sustained decrease in stock price as one such event or circumstance to be considered. Sequential passed its annual goodwill impairment test as of October 1, 2016. However, after the Company lowered its 2016 and 2017 earnings guidance on November 3, 2016, its stock price, which had been declining since at least mid-2015, dropped by approximately 40 percent. Sequential subsequently conducted two internal fair value calculations, as of mid-December 2016 and year-end 2016, which showed that the Company's market capitalization (including a control premium) had declined below its carrying amount. These internal calculations used the same methodology that Sequential had disclosed in its SEC filings and had used in connection with its annual goodwill impairment testing. Sequential, however, did not appropriately account for this quantitative evidence of likely impairment and instead performed a qualitative analysis, which omitted consideration of its internal fair value calculations and did not give sufficient consideration to other negative factors relevant to the Company's business. As a result, the Company unreasonably concluded that goodwill was not impaired.

3. As CFO, Respondent oversaw Sequential's assessments of whether its goodwill should be impaired. During this period, Respondent was aware of information indicating that Sequential's goodwill was more likely than not impaired and, as a consequence, he should have known that Sequential's financial disclosures and books and records did not accurately reflect its goodwill. Respondent also caused Sequential's failure to implement and maintain adequate internal accounting controls regarding interim assessments of goodwill impairment.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. As a result of the conduct described in this Order, Respondent caused Sequential's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

### **Respondent**

5. **Gary S. Klein**, age 45, is a resident of New Jersey, and served as Sequential's CFO from November 29, 2012 through August 31, 2017. Klein is not a Certified Public Accountant and does not hold any securities licenses.

### **Relevant Entity**

6. **Sequential Brands Group, Inc.** is a Delaware corporation headquartered in New York, New York. Sequential owns a portfolio of consumer brands and promotes, markets, and licenses those brands through retailers, wholesalers and distributors in the United States and abroad. Sequential's common stock is registered with the Commission under Section 12(b) of the Exchange Act and traded on the Nasdaq Capital Market under the ticker symbol "SQBG" at all times during the Relevant Period.

### **Facts**

#### ***Sequential's Business, its Declining Stock Price, and its Goodwill***

7. During the Relevant Period, Sequential owned and managed a portfolio of consumer brands and promoted, marketed, and licensed those brands through retailers, wholesalers, and distributors in the United States and abroad.

8. While Respondent was Sequential's CFO, Sequential acquired consumer brands, which created substantial goodwill on its balance sheet. During the Relevant Period, Sequential's indefinite-lived intangible assets, including goodwill, constituted the overwhelming majority of the Company's assets. As of December 31, 2016, intangible assets, including goodwill, represented \$1.3 billion, or 93 percent, of Sequential's total assets, and goodwill represented \$307.7 million, or 21.4 percent, of Sequential's total assets.

9. Sequential's stock price steadily declined during this period, beginning no later than mid-2015, and continuing through 2017. Sequential's stock price was a particularly important consideration in Sequential's goodwill impairment testing, since the Company's goodwill impairment testing policy, disclosed throughout 2016 in Sequential's quarterly and annual reports on Forms 10-Q and 10-K, expressly stated that Sequential considered its market capitalization (calculated as total common shares outstanding multiplied by the common equity price per share, as adjusted for a control premium factor) to represent its estimated fair value.

10. Accounting Standard Codification ("ASC") 350, *Intangibles—Goodwill and Other*, addresses the measurement of goodwill subsequent to its acquisition, including testing for impairment to goodwill, which must be conducted at least annually. ASC 350 also requires entities

to conduct interim goodwill impairment testing when certain indicators, or “triggering events,” are present, such as adverse changes in the business climate or market that might negatively affect the value of a reporting unit. Interim goodwill impairment testing is therefore required “if an event occurs or circumstances exist that indicate that it is more likely than not that a goodwill impairment exists.” See ASC 350-20-35-30. A sustained decrease in stock price may be an indicator of impairment under ASC 350. See ASC 350-20-35-3C.

### ***Sequential’s Annual Goodwill Impairment Testing for 2016***

11. Sequential performed its annual goodwill impairment test as of October 1, 2016. In connection with its annual testing, Sequential retained an external valuation consultant (the “Consultant”) to conduct a quantitative assessment of the Company’s fair value, using Sequential’s market capitalization (number of shares of stock outstanding, times stock price), adjusted for a control premium factor.<sup>2</sup>

12. Sequential’s stock price continued to decline in 2016. By the end of 2016, Sequential’s stock price was approximately 40 percent lower than its price on October 1, the date of its annual goodwill impairment test.

13. On December 6, 2016, the Consultant provided Sequential with a report showing that its calculation of the Company’s estimated fair value indicated that Sequential’s goodwill was not impaired as of the testing date, October 1, 2016. At Respondent’s direction, Sequential incorporated the Consultant’s findings into a memorandum documenting its annual impairment testing (the “Goodwill Memorandum”) and concluded that its goodwill was not impaired as of October 1, 2016.

14. On December 14, 2016, Respondent directed senior accounting and finance personnel who reported to him to conduct an analysis using the same quantitative methodology as used by the Consultant in connection with the annual goodwill impairment test. This analysis showed that Sequential’s estimated fair value as determined by that methodology had fallen below the Company’s carrying amount by approximately \$63 million.

15. During the preparation of the Company’s 2016 financial statements, Respondent again directed senior accounting and finance personnel who reported to him to perform this same calculation, this time applying Sequential’s stock price as of December 31, 2016. This result showed that, as of year-end 2016, Sequential’s estimated fair value as determined by that methodology had fallen below the Company’s carrying amount by approximately \$96 million.

16. Under ASC 350, Sequential could not reasonably ignore the objective, quantitative, observable evidence from the December 14 and December 31 calculations that goodwill was more likely than not impaired as of December 2016. Sequential violated GAAP and the federal

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<sup>2</sup> A “control premium” represents the amount that a buyer would be willing to pay over the current market price of a publicly traded company to acquire a controlling share in that company.

securities laws by neither conducting a quantitative assessment to confirm the impairment and to determine its magnitude, nor considering this objective evidence in a qualitative assessment. Rather, in connection with the preparation of the Company's year-end 2016 financial statements, senior accounting and finance staff documented a qualitative analysis as of December 31, 2016 to "supplement" the Goodwill Memorandum that they had prepared to memorialize the Company's annual goodwill impairment testing as of October 1, 2016.

17. This qualitative analysis, prepared under Respondent's oversight and with his approval, omitted consideration of the results of the two goodwill impairment analyses conducted for the fourth quarter of 2016 and did not give sufficient consideration to other negative factors relevant to the Company's business that pertained specifically to fair value, which were required, under ASC 350-20-35-3F, to be evaluated as potential indicators of impairment in the assessment of impairment under ASC 350.

18. Based on the foregoing, Sequential unreasonably concluded that goodwill was not likely impaired and therefore no further quantitative goodwill impairment testing of goodwill was required.

***Sequential Unreasonably Disregarded Triggering  
Events and Changes in Circumstances in Q1 and Q2 of 2017***

19. ASC 350 requires entities to conduct interim goodwill impairment testing when certain indicators, or "triggering events," are present, such as adverse changes in the business climate or market that might negatively affect the value of a reporting unit. Interim goodwill impairment testing is therefore required "if an event occurs or circumstances exist that indicate that it is more likely than not that a goodwill impairment exists." See ASC 350-20-35-30.

20. Between January 1, 2017 and June 30, 2017, additional indicators, or triggering events, suggested that Sequential's goodwill was more likely than not impaired, including:

- a. Sequential issued downward revised earnings guidance for a second time in a period of three months;
- b. Sequential's stock price declined by another 16 percent in the first quarter of 2017; and
- c. Sequential's Chief Executive Officer was removed.

21. As Sequential's CFO, Respondent oversaw the Company's goodwill impairment testing and monitoring for triggering events in interim periods. Despite the presence of these indicators of impairment in the first half of 2017, Sequential concluded that no interim goodwill impairment testing was necessary and continued to carry over \$300 million of goodwill on its financial statements as non-impaired during the first two quarters of 2017.

### ***Sequential's Internal Accounting Control Failures***

22. During the Relevant Period, Sequential lacked adequate internal accounting controls to provide reasonable assurance that the Company would perform and record its interim and annual assessments of goodwill for impairment as necessary to permit preparation of financial statements in conformity with GAAP.

23. Sequential failed to implement internal accounting controls, policies and procedures reasonably designed to identify potential indicators or triggers for impairment and to cause the Company to conduct appropriate interim goodwill impairment testing where, pursuant to ASC 350, indicators of impairment were present.

24. Sequential also failed to implement internal accounting controls, policies and procedures reasonably designed to cause the Company to conduct appropriate impairment testing where, pursuant to ASC 350, it was more likely than not that the carrying amount of Sequential's reporting unit exceeded its fair value.

### ***Sequential's Material Misstatements and Omissions in SEC Filings and Financial Statements***

25. As a result of the Company's failure to timely impair goodwill, its financial statements for 2016 contained several material accounting errors, including: (i) an overstatement of income from operations; (ii) an understatement of operating expenses; (iii) an understatement of net loss; (iv) an overstatement of goodwill; and (v) an overstatement of total assets.

26. Sequential carried these errors forward into the first two quarters of 2017. Its financial statements for the first two quarters of 2017 contained several material accounting errors, including: (i) an overstatement of goodwill; (ii) an overstatement of total assets; (iii) an understatement of accumulated deficit; and (iv) an overstatement of stockholders' equity.

27. Sequential made additional misstatements and omissions related to its goodwill impairment testing in its periodic and current reports. These included its failure to disclose that it had conducted objective market capitalization analyses for the fourth quarter of 2016, using the same methodology as used in connection with its annual testing, which showed that its carrying amount likely exceeded fair value. Sequential also failed to disclose that it omitted the unfavorable results of these calculations from its qualitative goodwill impairment assessment conducted at year-end 2016.

28. These material misstatements and omissions occurred in Sequential's 2016 annual report on Form 10-K, filed on March 14, 2017, its current reports on Form 8-K reporting its earnings results for 2016 and the first two quarters of 2017, furnished on March 2, May 4 and July 27, 2017, respectively, and its quarterly reports on Form 10-Q for the first two quarters of 2017, filed May 10 and August 9, 2017, respectively. Except for the Form 8-K furnished on July 27, 2017, Respondent also signed each of these reports as Sequential's CFO.

## Violations

As a result of the conduct described above, Respondent caused Sequential's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual, quarterly, and current reports as the Commission may require and such further material information as may be necessary to make the required statements not misleading.

As a result of the conduct described above, Respondent caused Sequential's violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

Lastly, as a result of the conduct described above, Respondent caused Sequential's violations of Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

## IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder.

B. Respondent shall, within 21 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Gary S. Klein as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jennifer Leete, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.



**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary